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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09-701,237	02/15/2001	Arturo Geifman	GEIFMAN-1	8709

1444 7590 10.03.2002

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EXAMINER

WONG, LESLIE A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/03/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/701,237

Applicant(s)
Geifman et al.

Examiner
Leslie Wong

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1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-56 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-56 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some* c) None of:
- Certified copies of the priority documents have been received.
 - Certified copies of the priority documents have been received in Application No. _____
 - Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|--|
| 1) Notice of References Cited (PTO-892) | 4) Interview Summary (PTO-413) Paper No(s). |
| 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) PTO-1449) Paper No(s). <u>6</u> | 6) Other: |

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 32-56 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant does not clearly teach what is encompassed by "enhance the flavor".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 35-37, 39-42, 45, 52, and 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 35-37 are indefinite as to "the taste enhancer" as there is no antecedent basis for this phrase.

Claims 39 and 40 are indefinite as to "the serum" as there is no antecedent basis for this phrase.

Claims 41, 42, 52, and 53 are indefinite as to "the hydrolysis" as there is no antecedent basis for this phrase.

Claim 45 is indefinite as to "the carrier" as there is no antecedent basis for this phrase.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

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basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 32 and 33 rejected under 35 U.S.C. 102(b) as being anticipated by Zelkha et al (WO 95/16363), Yoji (JP 59095868), and Yoji (JP 59095869).

Zelkha et al (WO 95/16363), Yoji (JP 59095868), and Yoji (JP 59095869) all teach a clear tomato concentrate added to food (see corresponding documents).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made

Claims 34-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zelkha et al (WO 95/16363), Yoji (JP 59095868), and Yoji (JP 59095869) in view of Dainiho Shigyo (JP 59095871) and de Barros et al.

Zelkha et al (WO 95/16363), Yoji (JP 59095868), and Yoji (JP 59095869) all disclose a clear tomato concentrate added to food (see corresponding documents). Yoji (JP 59095868) and Yoji (JP 59095869) specifically disclose the addition of other flavors.

The claims differ as to the specific type of hydrolysis utilized.

Dainiho Shigyo discloses the application of heat to the transparent supernatant of tomato

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juice (see abstract)

De Barros et al disclose the hydrolysis of tomato juice using enzymes (see abstract).

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use any of the hydrolysis treatments taught by the prior art in that of Zelkha et al (WO 95/16363), Yoji (JP 59095868), and Yoji (JP 59095869) because the use of different types of hydrolysis in tomato products is conventional in the art.

With respect to Claim 33, it is noted that the claimed flavor enhancers are notoriously well-known and readily available to one of ordinary skill in the art.

All of the claim limitations have been considered. None of them are seen as serving as basis for patentability. No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (703) 308-1979. The examiner can normally be reached on Tuesday-Friday. The fax number for this Group is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Leslie Wong
Primary Examiner
Art Unit 1761

LAW
September 26, 2002